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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,957	09/25/2003	Jon C. Marine	MAT 315	9433
23581	7590	04/10/2006	EXAMINER	
KOLISCH HARTWELL, P.C. 200 PACIFIC BUILDING 520 SW YAMHILL STREET PORTLAND, OR 97204			CEGIELNIK, URSZULA M	
			ART UNIT	PAPER NUMBER
			3711	

DATE MAILED: 04/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/672,957	Applicant(s) MARINE ET AL.	
	Examiner Urszula M. Cegielnik	Art Unit 3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-6 and 8-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5, 6 and 25-48 is/are allowed.
- 6) ☒ Claim(s) 4, 8, 13, 14, 18 and 19 is/are rejected.
- 7) ☒ Claim(s) 9-12, 15-17 and 20-24 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 4, 14, 18, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Stadlbauer.

Stadlbauer a body (32) adapted to function in a plurality of modes, including a first mode imitating a first persona (a forward motion of a walking dog), and a second mode imitating a second persona (leg raising of a dog relieving itself); a manual actuator (74) adapted to change a function of the body between the first mode and the second mode; and at least one appendage (13) rotatably connected and adapted to move relative to the body (col. 4, lines 35-39), the manual actuator (74) is incorporated in the at least one appendage (13), and the manual actuator is actuated by moving the at least one appendage (13) from a first position to a second position (col. 4, lines 35-39), the body includes a posterior end (92), the at least one appendage (13) includes a leg (i.e. hind leg 13) adjacent to the posterior end (92), the leg includes a foot, the leg may be rotated to assume a plurality of rotational positions relative to the body (col. 4, lines 35-39) and the manual actuator (74) is incorporated in the leg (i.e. is operably coupled) and the manual actuator is actuated by moving the leg from a first position to a second position (col. 4, lines 35-39).

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Claims 8 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Smirnov.

Smirnov discloses a body (1); at least one sensor (28), including at least one transition sensor (mode selection circuit 28 - one of a set of mechanical switches or jumpers, paragraph 0034, lines 1-2) ; a controller (21) adapted to function in a plurality of modes, including a first mode, the controller (21) receiving an input from the at least one sensor (28) and producing an output that causes the body to imitate a first persona; a second mode, the controller receives an input from the at least one sensor and produces an input that causes the body to imitate a second persona; a transition mode, the controller receives an input from the at least one transition sensor and produces output that converts the toy between the first and the second mode; and at least one manual actuator (paragraph 0035, lines 1-4) that activates the at least one transition sensor (28); the at least one transition sensor (mode selection circuit 28) includes a first transition sensor (a first of a set of mechanical switches or jumpers, paragraph 0034, lines 1-2) and a second transition sensor (a second of a set of mechanical switches or jumpers of mode selection circuit), and the at least one manual actuator (6) (paragraph 0035) includes a first manual actuator (6) and a second manual actuator (7); the first manual actuator activates the first transition sensor (a first of a set of mechanical switches or jumpers of mode selection circuit) by sending an input to the controller (paragraph 0034, lines 1-2), the controller then converts the toy between the first mode and the second mode, and the second manual actuator (6) activates the second transition sensor (paragraph 0034, lines 1-2) sending an input to the controller, the

controller (21) then converts the toy from the second mode to the first mode (paragraphs 0031 and 0035).

Allowable Subject Matter

Claims 9-12, 15-17, and 20-24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 5, 6, and 25-48 are allowed.

Response to Arguments

Applicant's arguments filed 28 February 2006 have been fully considered but they are not persuasive.

Applicant contends that Stadlbauer does not disclose

Applicant argues that Stadlbauer does not disclose or suggest the subject matter of claim 4, namely, "a body adapted to function in a plurality of modes, including a first mode imitating a first persona, and a second mode imitating a second persona" and "a manual actuator adapted to change a function of the body between the first mode and the second mode... wherein the manual actuator is incorporated in the leg". The examiner submits that the claim excerpts that Applicant is making reference to include the word "adapted to". Stadlbauer meets the claimed limitations since the structure has only to be capable of performing the function. But, Stadlbauer clearly shows a manual actuator (74) that changes a function of the body between a first mode (i.e. a forward motion of a walking dog, which is a first persona) and a second mode (i.e. leg raising of a dog relieving itself, which is a second persona). Furthermore, which regards to

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Applicant's statement that Stadlbauer does not disclose an act that is consistent with the persona of a human, nowhere in the claim does it recite a persona of a human.

The abovementioned remarks are applicable with respect to claim 14.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Urszula M. Cegielnik whose telephone number is 571-272-4420. The examiner can normally be reached on Monday through Friday, from 5:45AM-2:15PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris H. Banks can be reached on 571-272-4419.

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The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300 for both regular and After Final communications.

Urszula M. Cegielnik
Assistant Examiner
Art Unit 3711



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SUPERVISORY PATENT EXAMINER
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